

Soft drinks do not qualify for the low rate of tax that is applicable to certain food items. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

May 1, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 7, 2002 that we received on February 22, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

ABC requests a written opinion as to the sales taxability to our customers on the purchase of the following items:

1. Almond Breeze non-dairy drink - 8 oz.
2. Vitasoy soy drink - one gallon
3. Westbrae Natural Rice Drink - 16 oz.
4. Colgate Peroxyl
5. Listerine Pocket Packs
6. Fresh Breath dental gum 12 pieces
7. Advance Breath Care 30 pieces
8. Arm & Hammer dental care 32 pieces
9. Aqua Fresh whitening dental gum 32 pieces
10. Advance White whitening gum 30 pieces
11. Orbit whitening gum 36 pieces

Please note some of the dental gums may reduce or neutralize plaque or contain tartar control according to the packaging.

Enclosed you will find information regarding each of these items.

Thanks very much for your help.

Please refer to the enclosed copy of 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

The sale of soft drinks is always subject to the high rate of tax. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container, regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310(b)(5).

A medicine or drug is any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities.

We have examined the copies of the product labels that you submitted. It appears that product items 1 through 3 are soft drinks subject to the full rate of tax.

Item 4 states on its label that it is an antiseptic oral wound cleanser for use to cleanse canker sores and wounds or gum inflammation resulting from dental procedures, accidental injury, or other irritations of the mouth and gums such as mouth burns. This is a medicinal claim and this product is subject to the low rate of tax. Please note that a statement that a product "cleanses" something or "kills germs in general" does not constitute a medicinal claim. However, a claim that a product is for use as an antiseptic to kill germs in wounds or to cleanse wounds or burns to prevent infection does constitute a medicinal claim.

The label for product 5 states that it kills germs for a clean mouth feeling. This language by itself this is not a medicinal claim and this product is subject to the full rate of tax.

Products that purport to whiten teeth or freshen breath are generally not making a medicinal claim. Products 6 through 11 contain statements that they whiten teeth and "may reduce the risk of tooth decay." These statements are not medicinal claims and these items are subject to the full rate of tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.